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SUPREME COURT, U.S.

Supreme Court of the United States

OCTOBER TERM—1949

No. 474

WALTER N. SMITH, et al.,

Petitioners,

AGAINST

HON. WILLIAM O'DWYER, Mayor of the City of New York; LAZARUS JOSEPH, Comptroller; VINCENT IMPELLITTERI, President of City Council; HUGO E. ROGERS, JAMES J. LYONS, JOHN CASHMORE, JAMES A. BURKE, and CORNELIUS A. HALL, constituting the Board of Estimate; HON. WILLIAM REID, Chairman; FRANK X. SULLIVAN, Commissioner, and SIDNEY H. BINGHAM, constituting the New York City Transit Commission, et al.

PETITION FOR REHEARING

WALTER N. SMITH,
Petitioner.

Supreme Court of the United States

OCTOBER TERM—1949

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Petitioners,

against

HON. WILLIAM O'DWYER, Mayor of the City of New York; LAZARUS JOSEPH, Comptroller; VINCENT IMPELLITTERI, President of City Council; HUGO E. ROGERS, JAMES J. LYONS, JOHN CASHMORE, JAMES A. BURKE, and CORNELIUS A. HALL, constituting the Board of Estimate; HON. WILLIAM REID, Chairman; FRANK X. SULLIVAN, Commissioner, and SIDNEY H. BINGHAM, constituting the New York City Transit Commission, et al.

PETITION FOR REHEARING.

Walter N. Smith, above-named petitioner, presents this, his petition, for a rehearing of the above entitled cause, and in support thereof, respectfully shows:

One of the principal questions involved is whether the exercise of arbitrary power in Government should be exercised. Here the Supreme Court of the State of New York exceeded its jurisdiction in that the statute upon which Mr. Justice Hecht based his opinion and order had been expressly and absolutely repealed prior to the commencement of the action and Mr. Justice Botein relying upon the same dismissed petitioners' complaint and denied said motion. The question of arbitrary power was duly raised in the motion to dismiss the appeal in the Court below. That the notice that the Court had denied my application prior to

the acknowledgment of receipt of the remaining 30 copies and the 40 dollars seems unusual. Secondly, prior to the purchase of the I.R.T. by the City the purpose of the referendum of this State to extend the credit of the City of New York to enable said City to purchase same was to foster the uniform plan on a five cent fare and the people voted yes upon that issue. There seems to be no authority both Federal and State for the use of an ex parte order without NOTICE and an opportunity for petitioner to object. Thirdly, the matter to be determined here is whether an act of legislation supposed to govern this case as law is itself in conformity to the supreme law of the Constitution.

To withhold from the citizens a right to be heard upon a question that must be decided by the judiciary when the law is supposed to govern his rights and prescribe the duties and petitioners having placed those rights under the protection of the 14th Amendment to the Federal Constitution, the keen eyes of this Honorable Court who can see from the heights and judge from the depths of things would seem to be unjust notwithstanding how grave the situation or pernicious the attack. This Court has repeatedly decided that a rule of practice must not for any technical reason prevail over a constitutional right.

All restrictions which the constitutions have laid upon the powers of the State have been disregarded by defendants-respondents. Petitioner believes that statutes of a state should never be preferred than the supremacy that both Constitutions have and still claims for itself. It may be that in all debates in the conventions that adopted our Federal Constitution, the one to establish justice was more minutely and carefully discussed than any other. The painstaking care was to prevent citizens from one State to be exposed to unfavorable influences in the other States and that defect was the weakness of the Confederate States. Lastly, the State and Municipal corporations should not be the final judge of

any matter where the rights of private property is concerned in preference of applicable decisions of this Honorable Court who has the last word to say of any law. It seems safe to say here in concluding this application for a rehearing, that the defendants-respondents herein have joined with the Legislature in an organized warfare against both the Federal Constitution, applicable decisions of this Honorable Court, Acts of Congress, Constitution of the State of New York and the highest and highstanding Courts of the State of New York, thereby assaulting on and divesting the people of this State of their private property rights. Shall we at this time disregard the work and labor of the framers of both constitutions, members of the conventions, and members of Congress and cast it aside or will this Honorable Court step aside and close its eyes to accommodate the wrongdoers?

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the application for a writ of certiorari directed to the Court of Appeals of the State of New York in the above entitled cause be upon further consideration granted as petitioned for.

Dated, January 19, 1950.

Respectfully submitted,

WALTER N. SMITH,
Petitioner.

This is to certify that this application is made in good faith and not for delay.

Walter N. Smith